IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15241 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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NAVSEBHAI DEVALYABHAI & 1 - Petitioners
Versus
KISHANBHAI DEVUBHAI & 2 - Respondents

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Appearance :
MR JOY MATHEW for Petitioners
MR HRIDAY BUCH for Respondents

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 03/10/2006

ORAL JUDGMENT

1. This petition under Article 227 of the Constitution of India seeks to challenge the order dated 26.06.2006 made by the trial Court below

application – exhibit 12 whereby the application for condonation of delay moved by the petitioners – defendants came to be rejected. The plaintiffs filed Regular Civil Suit No. 70 of 2005 and upon service of process the defendants entered their appearance vide exhibit – 7 dated 30.11.2005. However, the written statement was filed only on 13.03.2006. The defendants, therefore, moved application – exhibit 12 seeking condonation of delay, which came to be rejected vide impugned order.

2. Learned Advocate Mr.Joy Mathew appearing on behalf of the defendants submitted that the delay in fact was only 10 days and the trial Court erred in not condoning the same. That the defendants were granted time up to 28.02.2006 to tender written statement but as the defendants, who were tribals, had gone out of station for labour work could not remember the date for filing written statement and thus, there was delay of 10 days which was required to be condoned.

3. Mr.H.C.Buch, learned advocate appearing on

behalf of the original plaintiffs submitted that the defendants had incorrectly projected the period of delay as being only 10 days. That as per the amended provision of Order VIII Rule 1 of the Code of Civil Procedure defendants were duty bound to present written statement of their defence within 30 days from the date of service of summons. That under the proviso a discretion was granted to the trial Court to permit the defendants to file written statement on any other day, as may be specified by the Court, for reasons to be recorded in writing but such extended period could not be in excess of 90 days from the date of service of summons. That even if this provisions of the proviso were to be taken into consideration a period of more than 100 days had gone by and therefore, the trial Court had rightly rejected the application.

Alternatively, Mr.Buch, made a fair proposal to the effect that in the event the defendants were to be permitted to file written statement they should be put to terms so as to enable the plaintiffs to proceed with the hearing of the suit and the

defendants must not delay the trial, the trial having already been delayed enough.

4. **RULE**. Mr.H.C.Buch, learned advocate waives service of rule. With consent of the learned advocates the petition is taken up for hearing and final disposal today.

5. As can be seen from the impugned order, the trial Court has recorded that the defendants have been granted number of opportunities to file written statement but applications seeking extension of time in a routine manner in printed format have been filed indicating that the defendants were not serious about availing of right granted by the statute to them. It is in this context that the trial Court, after noting that though the language employed by the proviso is couched in mandatory terms, even if the same is read as being directory in nature the defendants have failed to make out any sufficient cause and were not entitled to any relief and hence, the application for condonation of delay came to be rejected.

6. Going strictly by the provisions of law and facts of record, it is apparent that no infirmity exists in the impugned order made by the trial Court so as to warrant interference under Article 227 of the Constitution of India. However, without entering into the legal niceties, taking into consideration the fact that the defendants are semi literate labourers, the procedural law must yield to cause of substantial justice. In the circumstances, without disturbing the reasoning given by the trial Court in the impugned order, the said order is quashed and set aside only qua the concluding portion so as to enable the defendants to tender their written statement which has not been taken on record by the trial Court. This is subject to the following condition:

(i) The defendants shall give an undertaking before this Court within a period of ten days from today that the defendants shall not pray for time once the suit goes to trial with a copy thereof to be filed before the trial Court within the same period.

7. Upon such undertaking being tendered before the trial Court, the trial Court shall take the written statement on record and proceed with trial in accordance with its own convenience and calender bearing in mind that the defendants are precluded from seeking any adjournments during the course of the trial.

8. In the result, the petition is allowed in aforesaid terms. Considering the fact that the plaintiffs have been dragged to this Court for no fault of theirs and considering the fact that the trial of the suit has been delayed because of these proceedings, it would serve the ends of justice if the defendants are called upon to bear the costs of these proceedings. Accordingly, the costs quantified at a sum of Rs. 2500/- (Rupees Two thousand and five hundred only) shall be paid by the defendants to the plaintiffs. The costs to be tendered within the same time frame as the undertaking.

Rule made absolute.

[D.A.MEHTA,J.]

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